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Supreme Court of the United States

OCTOBER TERM, 1992

TXO PRODUCTION CORP.,

Petitioner,

v.

ALLIANCE RESOURCES CORP., TUG FORK LAND COMPANY, GEORGE KING, and GROVER C. GOODE,

Respondents.

On Writ of Certiorari
To The Supreme Court of Appeals
of West Virginia

BRIEF *AMICI CURIAE* OF PHILLIPS PETROLEUM CO., UNITED SERVICES AUTOMOBILE ASSOCIATION, AND ALLSTATE INSURANCE CO. IN SUPPORT OF PETITIONER

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QUESTIONS PRESENTED

Amici shall address the following questions:

1. Whether the Due Process Clause of the Fourteenth Amendment imposes special obligations on the judiciary to supervise the imposition of punitive damages because the common law punitive damage system is a judicially created public-wrong punishment mechanism that functions largely without any meaningful or adequate guidance by the legislative or executive branches of government.

2. Whether the courts have failed faithfully to adhere to the due process principles articulated by this Court in *Pacific Mutual Life Insurance Co.* v. *Haslip*, 111 S. Ct. 1032 (1991).

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INTEREST OF *AMICI CURIAE*•

Amici respectfully submit this brief in support of petitioner to assist the Court in analyzing the due process issues raised in this case. The purpose of this brief is twofold: First, to address the jurisprudential underpinnings of *Pacific Mutual Life Insurance Co.* v. *Haslip*, 111 S. Ct. 1032 (1991); and second, to expose the haphazard and capricious manner in which *Haslip* has been implemented.

•Letters reflecting written consent of the parties to the filing of this brief have been filed with the Clerk of the Court.

Amici have experienced first-hand the pernicious effects of punitive damage systems unchecked by the due process safeguards approved by this Court in *Haslip*.

Phillips Petroleum Company has asked for rehearing and rehearing *en banc* in *Robertson Oil Co.* v. *Phillips Petroleum Co.*, 979 F.2d 1301 (8th Cir. 1992). In that case, the Eighth Circuit, applying Arkansas law, upheld two separate punitive damage awards against Phillips—$4,000,000 for tortious interference with a business relationship and $4,000,000 for fraud—for its refusal to fulfill a gratuitous promise resulting in a "single compensatory injury" of $750,000 to the plaintiff. The court rejected Phillips' Due Process Clause challenges to the Arkansas punitive damage system and the dual $4,000,000 punishments, upholding the Arkansas punitive damage jury instruction as "comparable" to that approved in *Haslip* and finding that Arkansas' "shock the conscience" standard of judicial review was constitutional. *Id.*, at 1302, 1306. But the punitive damage jury instruction in *Robertson* allowed a "standardless approach . . . coupled with consideration of an improper element (wealth of the defendant)," *id.*, at 1313 (Beam, J., dissenting), that "falls well short of the constitutional requirements outlined in *Haslip*." *Id.* Accordingly, the jury was allowed "to 'run wild' and no amount of post-trial judicial review can correct the error." *Id.*

Allstate Insurance Company is currently appealing a $2,000,000 punitive damage judgment in the Tenth Circuit. *See Capstick* v. *Allstate Ins. Co.*, No. CIV-90-284-5 (E.D. Okl. Mar. 26, 1991), *amended* (E.D. Okl. June 11, 1991), *appeal docketed*, No. 91-7088 (10th Cir. June 28, 1991). Punitive damages were awarded based upon Allstate's alleged "bad faith" in handling a claim for coverage of a $3,000 automobile fire loss involving circumstances in which an act of arson by the automobile's owner was suspected. The punitive damages imposed are 666 times greater than the amount of compensatory damages.

United Services Automobile Association ("USAA") was recently assessed with a $2,594,446 punitive damage award

by a California jury in an insurance bad faith case despite the fact that its insured *stipulated at trial* that USAA's insurance claim adjustment was reasonable, prompt and thorough. *Kyle* v. *United Services Auto. Ass'n*, No. 323725 (San Mateo Superior Court May 5, 1992), *appeal docketed*, No. A057408 (Cal. Ct. App.). USAA was punished solely on the basis of allegations that it should not have asserted a tenable legal defense to liability under the insurance contract, an increasingly popular punitive damage theory, similar to the one invoked here to punish TXO, that not only raises serious due process concerns but also implicates the First Amendment right of access to the courts. Indeed, in 1989, the Alabama Supreme Court assessed USAA with a $2,500,000 punishment for filing a declaratory judgment action "seeking a determination of its nonliability under a homeowner's insurance policy . . . ." *United Services Auto. Ass'n* v. *Wade*, 544 So. 2d 906, 907 (Ala. 1989).

Amici believe that their recent experiences with the punitive damage system make them especially well suited to assist the Court in addressing the important issues presented by this case.

SUMMARY OF ARGUMENT

Punitive damages require particularly rigorous judicial scrutiny because they are government punishments imposed for perceived public wrongs without the participation and protections of the legislative and executive branches of government. Punitive damages are not "damages" in the traditional sense because they do not serve and are not limited by the compensation function. Rather, punitive damages are closely analogous to criminal punishment because they are exacted by the state to punish and deter anti-social conduct. Unlike criminal punishments, however, punitive damage systems (1) generally lack legislatively prescribed standards and punishment levels; (2) employ self-interested private prosecutors, rather than disinterested executive branch officials, to act in the name of "the *public* interest," *Adams* v. *Murakami*, 54 Cal. 3d 105, 284 Cal. Rptr. 318, 813 P.2d 1348, 1358 (1991) (emphasis in

original), unconstrained by public prosecutorial standards; and (3) typically involve little or uneven and unpredictable judicial supervision.

As a result of theoretical confusion in the 19th century law of torts and compensatory damages, the punitive damage system developed without any legislatively determined standards or limits. It therefore operates without many of the most vital protections from arbitrary government action: laws of general application, clearly and intelligibly written, that give advance notice of the conduct that will warrant punishment and that establish express limits on the extent of the punishment that may be inflicted for deviation from those standards.

The executive branch, and its customary limiting role in the application of state-imposed punishments, is also absent. Thus, punishment is inflicted without the restraining influence of executive officials charged with responsibility for fair, consistent, uniform and non-vindictive enforcement of the public's laws under public standards for the public welfare and accountability to the public through democratic processes. Rather, punitive damages are administered by unaccountable private individuals with a financial stake in the outcome of the prosecution, so that every case is motivated by a desire to inflict the severest form of punishment.

Having created a punishment system without the involvement of the other branches of government, the judiciary has allowed it to run wild. The courts generally defer to unsupervised juries that are permitted to assess punishments almost exclusively on the basis of prejudicial factors such as the defendant's wealth, refusing to set aside all but the most subjectively "shocking" awards.

Due process does not exist where States impose punishment without any participation by two of the three branches of government and idle and inconsistent oversight by the third. The Court's decision in *Pacific Mutual Life Insurance Co.* v. *Haslip*, 111 S. Ct. 1032 (1991), implicitly recognized that the concentration of legislative, executive

and judicial power in private prosecutors and in *ad hoc*, unfettered juries is dangerous, unless the judiciary applies exceedingly vigilant standards and strict controls to ensure rationality, fairness and predictability in the system.

However, the vast majority of courts have largely ignored the due process principles articulated in *Haslip*. The punitive damage system, which has produced nearly one-half *billion* dollars of punishment since *Haslip* was decided, remains literally out of control.

ARGUMENT

A. Due Process Requires that the Judiciary Carefully Scrutinize and Consistently Supervise Punitive Damages Because of the Absence of Legislative and Executive Participation

1. The Common Law Punitive Damage System Lacks Adequate Legislative, Executive and Judicial Branch Controls

Punitive damages are state-imposed, " 'quasi-criminal' "[1] punishments for public, as distinguished from private, wrongs.[2] They serve the exact same purposes as the criminal law—"retribution and deterrence." *Haslip*, 111 S. Ct., at 1044. Although the penalty is paid to a civil litigant rather than the State, it is nevertheless a state-directed punishment for deviation from a societal standard. The term "damages," which implies a remedial function, is therefore a misnomer because compensation for injuries plays no part in the punitive damage function. *City of Newport* v. *Fact Concerts, Inc.*, 453 U.S. 247, 266-67 (1981).

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[1] *Smith* v. *Wade*, 461 U.S. 30, 59 (1983) (Rehnquist, J., dissenting).

[2] Blackstone divided wrongs into two species: (1) private wrongs that invaded private rights and were redressed by private remedies, primarily compensatory damages; and (2) public wrongs that involved breaches of broad public standards of conduct and were sanctioned through the medium of public remedies such as fines. *See* 3 W. Blackstone, *Commentaries* 2 (1768).

Despite their affinity to criminal fines,[3] punitive damages have generally not been subject to any of the controls of the legislative, executive and judicial branches that protect defendants from arbitrary, capricious and disproportionate punishments in criminal cases. The " 'touchstone of due process is protection of the individual against arbitrary action of government.' " *Daniels* v. *Williams*, 474 U.S. 327, 331 (1986) (quoting *Dent* v. *West Virginia*, 129 U.S. 114, 123 (1889)). In our system of government, " 'the sovereign and all its agencies are bound to act upon principles, not according to arbitrary will; [and] are obliged to follow reason instead of being free to follow caprice.' " *Mattison* v. *Dallas Carrier Corp.*, 947 F.2d 95, 101 (4th Cir. 1991) (quoting R. Pound, *The Spirit of the Common Law* 183 (Beacon Press ed. 1963)). In criminal cases, arbitrary and capricious action is checked to a significant degree by the division of the power over criminal punishment among the three branches of government. The legislative branch has the responsibility prospectively to define proscribed conduct and punishment. The executive branch has the duty to serve as the "disinterested prosecutor with the unique responsibility to serve the public, rather than a private client, and to seek justice that is unfettered." *Young* v. *United States ex. rel. Vuitton et Fils S.A.*, 481 U.S. 787, 815 (1987) (Blackmun, J., concurring). And the judicial branch imposes and administers a panoply of procedural safeguards to ensure that criminal defendants are treated fairly.

[3] Although the Court in *Browning-Ferris Indus. of Vermont, Inc.* v. *Kelco Disposal, Inc.*, 492 U.S. 257 (1989), held that the Excessive Fines Clause of the Eighth Amendment does not apply to punitive damages, it has often characterized punitive damage awards as "fines," because of their indisputably penal nature. *See, e.g., Gertz* v. *Robert Welch, Inc.*, 418 U.S. 323, 350 (1974) ("private fines levied by civil juries"); *Silkwood* v. *Kerr-McGee Corp.*, 464 U.S. 238, 259, 269 (1984) (Blackmun, J., dissenting) (punitive damage award was a "jury fine"; trial court instructed the "jury to fashion a fine"); *Rosenbloom* v. *Metromedia, Inc.*, 403 U.S. 29, 82 (1971) (punitive damages "serve the same function as criminal penalties and are in effect private fines"); *Smith* v. *Wade*, 461 U.S., at 59 (Rehnquist, J., dissenting) (characterizing punitive damage award as a " 'fine' . . . [which] should go to the State").

As shown below, these important institutional controls over punishment by "arbitrary will" are almost completely lacking in the common law punitive damage system.

a. Lack of Legislative Standards

i. *Standards of Liability*

Criminal fines, like other criminal punishment, may not be imposed for public wrongs unless the proscribed conduct is defined clearly and explicitly in *advance* by the legislature. *See, e.g., Grayned* v. *City of Rockford*, 408 U.S. 104, 108-09 (1972) ("It is a basic principle of due process that an enactment is void for vagueness if its prohibitions are not clearly defined."). That is because one of the "basic purposes" of the Due Process Clause of the Fourteenth Amendment has

> always been to protect a person against having the Government impose burdens upon him except in accordance with the valid laws of the land. Implicit in this constitutional safeguard is the premise that the law must be one that carries an understandable meaning with legal standards that courts must enforce.

Giaccio v. *Pennsylvania*, 382 U.S. 399, 403 (1966).[4]

Punitive damages for public wrongs, however, are inflicted based upon "ill-defined" standards, *Dun & Bradstreet, Inc.* v. *Greenmoss Builders, Inc.*, 472 U.S. 749, 780 n.4 (1985) (Brennan, J., dissenting), and constantly evolving common law tort theories that arise *ad hoc* from court decisions, often *after* the conduct for which the punishment is imposed. *See, e.g., Peterson* v. *Superior Court*, 31 Cal.

[4] As of the time of the ratification of the Fourteenth Amendment, nearly every state legislature had enacted a comprehensive criminal code that defined punishable crimes and fixed maximum punishments. (A compendium of those codes is reprinted in App. A, *infra*.) At the federal level, this Court rejected early the concept of common law crimes, holding that prior to prosecution of a federal offense, Congress "must first make an act a crime [and] affix a punishment to it . . . ." *United States* v. *Hudson*, 11 U.S. (7 Cranch) 31, 34 (1812).

3d 147, 181 Cal. Rptr. 784, 642 P.2d 1305 (1982) (holding that new tort rule allowing punitive damages for drunk driving would be applied retroactively). In many punitive damage cases, the standard of liability is like "a predator lurking in the shadows to pounce on the unsuspecting." *Eichenseer* v. *Reserve Life Ins. Co.*, 894 F.2d 1414, 1420 (5th Cir. 1990) (Jones, J., dissenting from denial of rehearing *en banc*); *see also Mattison*, 947 F.2d, at 105-06 (vague standards of liability for punitive damages coupled with unlimited nature of punishment make punitive damages "the product of the subjective feelings of a particular jury in a particular courtroom applying what they think 'the law should be instead of what it is' ") (quoting *Giaccio*, 382 U.S., at 403).

This case is a perfect example of the "vagueness . . . problems," *Browning-Ferris*, 492 U.S., at 283 (O'Connor, J., concurring and dissenting), that inhere in the system. The West Virginia Supreme Court acknowledged that "there is no West Virginia case on record directly recognizing an action for slander of title," *TXO Prod. Corp.* v. *Alliance Resources Corp.*, 187 W. Va. 457, 419 S.E.2d 870, 877, *cert. granted*, 113 S. Ct. 594 (1992). Nonetheless, the court was not deterred from announcing for the first time that this tort existed in West Virginia, delineating the elements of that newly recognized tort, and upholding a $10,000,000 retroactive punishment against petitioner based upon its commission.[5]

[5] The court recognized an action for slander of title based upon a provision in the state constitution stating that " 'the common law of England, so far as it is not repugnant to the principles of the Constitution of this State, shall continue in force within the same.' " 419 S.E.2d, at 877-78 (quoting W. Va. Code § 2-1-1). Relying exclusively on English court decisions from the 16th and 17th centuries, the court held "that an action for slander of title could always be brought in West Virginia." *Id.*, at 879. However, the court was obliged to turn to contemporary non-West Virginian authorities to define the elements of the tort. *See id.*

ii. *Standards Governing the Amount of the Punishment*

The amount of the punishment that may be imposed for criminal wrongs also is articulated by the legislature in statutes that specify finite, ascertainable limits. That is because "views . . . regarding severity of punishment . . . are peculiarly questions of legislative policy." *Gore* v. *United States*, 357 U.S. 386, 393 (1958). Indeed, the principle that limits on criminal punishment must be clearly prescribed by the legislature, and its corollary that judges and juries may not set such limits *sua sponte* on an *ad hoc* basis, have been recognized by the States since early in our Nation's history and were well established by the time the Fourteenth Amendment was ratified. *See supra* note 4 & *infra* App. A. As illustrated by the Court's unanimous decision in *Miller* v. *Florida*, 482 U.S. 423 (1987), this Court has assumed, at least since its decision in *Calder* v. *Bull*, 3 U.S. (3 Dall.) 386 (1798), that no person can be punished for the commission of an offense deemed "criminal" unless an upper limit on the punishment has been announced prior to the commission of the acts leading to conviction. Thus, in "the early days of the Republic . . . [e]ach crime had its defined punishment." *United States* v. *Grayson*, 438 U.S. 41, 45 (1978). Although the " 'excessive rigidity of the [mandatory or fixed sentence] system' " eventually gave way to a somewhat more flexible system that permitted the sentencing authority "to select a sentence within a *range* defined by the legislature," *id.*, at 46 (emphasis in original) (citations omitted),[6] even under the "indeterminate sentenc[ing]" model adopted in some jurisdictions, the legislature "defined the maximum [and] the judge imposed a sentence within the statutory range." *Mistretta*, 488 U.S., at 365; *Grayson*, 438 U.S., at 47.[7]

[6] *See also Mistretta* v. *United States*, 488 U.S. 361, 364 (1989) (although "Congress early abandoned fixed-sentence rigidity [it] . . . put in place a system of ranges within which the sentencer could choose the precise punishment").

[7] The Sentencing Reform Act, 28 U.S.C. § 991(b)(1), was enacted, in

However, "[u]nlike criminal penalties, . . . punitive damages are not awarded within discernible limits." *Rosenbloom* v. *Metromedia, Inc.*, 403 U.S. 29, 82-83 (1971) (Marshall, J., dissenting). Punitive damages are assessed and spontaneously imposed by juries randomly selected for a single case with little more guidance than a vague and general admonition to consider the primary goal of deterrence and the secondary goal of retribution. But juries cannot be expected to evaluate punishment levels based upon consideration of society's priorities and standards that legislatures consider when they establish criminal penalties. Thus, individual juries establish their own punishment regime without the tools, information, competence, experience or leavening features of the legislative process, and without the limiting restraint of the compensation function. *See Silkwood* v. *Kerr-McGee Corp.*, 464 U.S. 238, 276 n.3 (1984) (Powell, J., dissenting) (contrasting "finite" nature of compensatory damages with unlimited nature of punitive damages); *cf. Hicks* v. *Feiock*, 485 U.S. 624, 627 (1988) (O'Connor, J., dissenting).[8] Yet the *ad hoc* jury punishment selected in a particular case usually dwarfs the maximum criminal punishments for comparable or even more egregious public wrongs. *See Silkwood*, 464 U.S., at 263 (Blackmun, J., dissenting); *id.*, at 283 & n.13 (Powell, J., dissenting).[9]

relevant part, in response to the problems of uncertainty and inconsistency in sentencing resulting from the "unfettered discretion" conferred upon sentencing judges to impose punishment "within the statutory range fixed by Congress." *Mistretta*, 488 U.S., at 365; S. Rep. No. 225, 98th Cong., 1st Sess. 38-40 (1983). It is more than ironic that civil juries empowered to impose punitive damages possess vastly broader discretion than the "unfettered discretion" conferred upon sentencing judges that Congress sought to eliminate by a more determinate sentencing process.

[8] The retributive and deterrent purposes that justify punishment themselves "possess inadequate self-limiting principles," *Tison* v. *Arizona*, 481 U.S. 137, 180 (1987) (Brennan, J., dissenting), and therefore do not operate as any meaningful restraint on jury discretion when the legislature has not made a considered judgment regarding society's collective views about the egregiousness of certain conduct and its desire to punish and deter it.

That the punitive damage system operates in this fashion is primarily an historical accident. "Although punitive damages have long been recognized, the early reasons given for their award were uncertain . . . ." *Mattison*, 947 F.2d, at 103 (discussing historical evolution). As in England,[10] early punitive damage cases in this country confused the rationale for imposing "exemplary" damages, deeming them compensation for "intangible injuries" or ascribing dual compensatory and punitive justifications to jury awards that apparently exceeded the amount necessary to compensate for actual tangible injury. *See, e.g., McNamara* v. *King*, 7 Ill. (2 Gilm.) 432, 436 (1845). As the concept of actual damages expanded to include compensation for intangible injuries such as mental anguish, there was "nothing left for 'exemplary damages,' as formerly understood, to operate upon" and punitive damages generally came to be understood to refer to "punishment for the sake of public example . . . ." *Fay* v. *Parker*, 53 N.H. 342, 384 (1872). Because punitive damages were the product of the evolving common law tort compensation system, these monetary punishments imposed in ostensibly civil proceedings were, unlike monetary punishments imposed in criminal proceedings, left to the virtually unlimited, and rarely disturbed, discretion of the jury.

The anomaly of having statutorily limited monetary punishments in criminal cases and unlimited monetary punishments in punitive damage cases has gone unremedied but not unnoticed. A commentator observed in 1912 that

[9] For example, in this case, TXO's alleged slander of title in its efforts to obtain oil and mineral rights was punished by the award of $10,000,000 in punitive damages. The fines imposed by West Virginia criminal law for comparable conduct are miniscule in comparison. *See, e.g.*, W. Va. Code § 61-3-24a (criminal fine of no more than $300 may be imposed on person who obtains or attempts to obtain property by "false or fraudulent means").

[10] *See, e.g., Tullidge* v. *Wade*, 3 Wils. K.B. 18, 95 Eng. Rep. 909 (C.P. 1769).

"[it] certainly appears to be an incongruity that one may be punished by the public for [a] crime . . . by a fine limited by statute, and again punished in favor of the sufferer . . . for the same act, by exemplary damages, with little limit on the discretion of the jury." W. Hale, *Handbook On The Law Of Damages* §§ 87-88, at 306 (2d ed. 1912). The full impact of this limitless punishment regime on the civil justice system, however, was not felt until much later. As long as punitive damage awards were relatively rare and modest in amount, the system tolerated occasional aberrations. But the aberrations are now becoming the standard. *See Browning-Ferris*, 492 U.S., at 282 (O'Connor, J., concurring and dissenting); *see also Molzof* v. *United States*, 112 S. Ct. 711, 715 (1992); *Mattison*, 947 F.2d, at 103-04. In the last two decades, particularly, the doctrine metamorphasized from an infrequent anomaly designed to make a defendant "smart"[11] into a full-fledged punishment scheme that permits juries to punish so severely as literally to destroy a defendant. *See Central Alabama Electric Cooperative* v. *Tapley*, 546 So. 2d 371, 377 (Ala. 1989).

b. Lack of Executive Branch Enforcement

Public wrongs are customarily redressed through the efforts of public officials, constrained by public prosecutorial standards and governmental accountability, and precluded by law from having any personal stake in the punishments imposed.

Although early in our Nation's history, States followed the English system of permitting private prosecutors in criminal cases, since the beginning of the 19th century, most States have been "firmly committed to the concept of official public prosecution." Note, *The Outmoded Concept of Private Prosecution*, 25 Amer. U.L. Rev. 754, 763 (1976); *cf. Young*, 481 U.S., at 808 & n.10 (noting that most States have acknowledged the principle of a disinterested prosecutor). And in those few States that permit private prosecution of certain criminal offenses, restrictions are

[11] *See Fay* v. *Parker*, 53 N.H., at 354.

imposed that guarantee the due process safeguard of a disinterested prosecutor under the control of the executive branch.[12]

The punitive damage system, on the other hand, is driven exclusively by prosecutors who, by definition, have a private interest in the outcome of the litigation and are unfettered by executive branch duties and responsibilities or by the accountability imposed by the democratic process. These private litigants have no responsibility to the public and have a direct, material and purely personal interest in inflicting the greatest possible punishment in every case. *See Smith* v. *Wade*, 461 U.S., at 58 (Rehnquist, J., dissenting) (windfall punitive damage "bounty" is reward for private prosecutors). As has been observed, "[a] person who is to profit by the punishment of another is likely to prefer severe punishment to admonition which will best serve social ends, and the two are not necessarily synonymous." Morris, *Punitive Damages in Tort Cases*, 44 Harv. L. Rev. 1173, 1178 (1931). The legitimacy of such private bounty hunters is itself open to serious question. *Cf. Young*, 481 U.S., at 787; *Marshall* v. *Jerrico, Inc.*, 446 U.S. 238, 249-50 (1980).

"Vindicating the *public* interest . . . is the function of Congress and the Chief Executive," *Lujan* v. *Defenders of Wildlife*, 112 S. Ct. 2130, 2145 (1992) (emphasis in original), or at the state level, the legislative and executive branches. By contrast private plaintiffs seek punitive damages not to vindicate the public interest, but rather to further their own private interests—to obtain a "windfall" and a "boon" for themselves. *Adams* v. *Murakami*, 813 P.2d, at 1357-58.

[12] In these States, the private prosecutor is under the control of the district attorney's office and may participate in criminal proceedings only with that officer's permission. Note, *Private Prosecutors In Criminal Contempt Actions Under Rule 42(b) of the Federal Rules of Criminal Procedure*, 54 Fordham L. Rev. 1141, 1153 & n.51 (1986). In addition, private prosecutors are forbidden from representing a plaintiff in civil litigation related to the criminal prosecution. *Id.*, at 1154 & n.54.

c. Lack of Judicial Control

Whereas the judge, not the jury, typically determines the appropriate punishment in the criminal system within the statutory limits established by the legislature,[13] common law courts not only allow juries to calculate punitive damage awards in the first instance but indeed defer almost completely to jury determinations regarding the size of the award. "[J]uries are left largely to themselves," *Browning-Ferris*, 492 U.S., at 281 (Brennan, J., concurring), and possess "discretion to award *any* amount of punitive damages." *Bankers Life and Casualty Co.* v. *Crenshaw*, 486 U.S. 71, 77-78 (1988) (O'Connor, J., concurring in part and concurring in the judgment) (emphasis added). Unless the award may be said to be so outrageous that it, for example, "shock[s] the conscience of the court," *O'Neal Ford, Inc.* v. *Davie*, 770 S.W.2d 656, 659 (Ark. 1980), the level of punishment is whatever unpredictable, uneven and wildly capricious award the jury may select. *See International Bhd. of Elec. Workers* v. *Foust*, 442 U.S. 42, 50 (1979) ("the impact of these windfall recoveries is unpredictable and potentially substantial"); *Rosenbloom*, 403 U.S., at 82-83 (Marshall, J., dissenting) (the "essence" of punitive damages is "unpredictability and uncertainty").

Moreover, in criminal cases, public wrongs are redressed through a judicial process that insulates defendants to the greatest extent possible from prejudice based on race, status, domicile, social standing, or wealth. *Powell* v. *Texas*, 392 U.S. 514, 543 (1968) ("Punishment for a status is particularly obnoxious."). The opposite is true in the private punitive damage system. Punitive damages are "employed to punish unpopular defendants." *International Bhd. of Elec. Workers*, 442 U.S., at 50-51 n.14. The system is animated by precisely the prejudicial factors that have been forbidden in the criminal context, and courts do very little to prevent prejudicial, emotional appeals from dominating the punitive damage process. Juries are even instructed to punish according to the depths of the defendant's pocket,

[13] *See, e.g., Mistretta*, 488 U.S., at 365-67; Cal. Penal Code § 1170.

see, e.g., California Book of Approved Jury Instructions 14.71, and its "social condition and standing," *Holmes* v. *Hollingsworth*, 352 S.W.2d 96, 99 (Ark. 1961). Fines are therefore calculated according to sympathy for the plaintiff, hostility toward the defendant, and the irresistible invitation to fill out a blank check with a large number against a corporate bank account.

The criminal defendant also is afforded numerous procedural rights not available to the punitive damage defendant. *See Smith* v. *Wade*, 461 U.S., at 61 (Rehnquist, J., dissenting). For example, a criminal defendant may be entitled to a specific finding of criminal intent beyond a reasonable doubt by a unanimous jury before he can be fined $500, but the same individual or corporation may be fined $5,000,000 or $50,000,000 for the same conduct in a civil suit with none of these protections.[14]

2. *Haslip* Requires Active Judicial Oversight of Punitive Damages to Counter-Balance the Lack of Legislative and Executive Participation in the System

This Court did not expressly cite the lack of legislative, executive and judicial control over the common law punitive damage system as underpinning its holding in *Haslip*. But the due process principles articulated in that case may be explained on this basis. *Haslip* implicitly recognizes that when the government authorizes punishment for public wrongs in a system devoid of legislative or executive controls, the judiciary bears a heavy responsibility to regulate the judicially created system pursuant to which such

[14] No principled constitutional distinction may be drawn between monetary sanctions that are imposed to punish and deter on the basis of whether such sanctions are labeled "criminal" or "civil" or whether they are assessed in criminal or civil proceedings. It is clear that that "[t]he notion of punishment . . . cuts across the division between the civil and criminal law," *United States* v. *Halper*, 490 U.S. 435, 447-48 (1989), and therefore constitutional restraints on punishment are "not to be avoided by the simple label a State chooses to fasten upon its conduct or its statute." *Giaccio*, 382 U.S., at 402.

punishments are inflicted and to scrutinize the awards the system spawns.

The *Haslip* Court stressed two aspects of the appropriate role of the judiciary in overseeing the punitive damage process. First, the Court noted the importance of instructions to circumscribe the jury's decisionmaking process and the need to shield the jury from considering such highly inflammatory factors such as the defendant's "deep pocket." 111 S. Ct., at 1044-45. Second, the Court emphasized the need for an objective, rigorous, two-level post-verdict process that "*ensures* meaningful and adequate review by the trial court," *id.*, at 1044, (emphasis added), *and* requires appellate review that "makes *certain* that the punitive damages are reasonable in their amount and rational in light of their purpose to punish what has occurred and deter its repetition." *Id.*, at 1045 (emphasis added).

Haslip thus directs courts to take an active role in constraining jury discretion and scrutinizing awards in order to protect defendants from the arbitrary and disproportionate punishments that are the inherent result of a punishment system operating without any meaningful legislative or executive branch participation.[15]

B. Courts Have Ignored *Haslip* and Evaded This Court's Mandate For Clearly Defined Standards to Govern Jury Decisions, Meaningful Judicial Review of Awards, and Proportionality in Punishment

Although a few courts have applied seriously the *Haslip* standards in reviewing punitive damage awards, most courts have either ignored *Haslip*[16] or have wrongly perceived that decision as a license to affirm all but the most

[15] *See also Browning-Ferris*, 492 U.S., at 281 (Brennan, J., concurring) ("I for one would look longer and harder at an award of punitive damages based on such skeletal guidance than I would at one situated within a range of penalties as to which responsible officials had deliberated and then agreed.").

[16] One court imposed a $1,000,000 award without even citing *Haslip*. *See Snead* v. *Redland Aggregates Ltd.*, No. A-90-CA-38 (W.D. Tex. May 27, 1992).

extravagant of punitive damage awards.[17] In the federal system alone, in the two years since *Haslip*, appellate courts have affirmed at least $56,866,666.65 in punitive damages. District courts have upheld punitive damage awards totalling $233,575,000, including a securities fraud award of $134,000,000 and a "tortious interference" award of $30,000,000. And state appellate courts have let stand punitive damage jury verdicts of at least $128,779,000.[18]

As discussed below, courts have upheld this staggering collection of punishments in disregard of virtually every precept set forth in *Haslip* for analyzing the constitutionality of punitive damages.

1. Jury Instructions

Courts have interpreted *Haslip* to mean that almost any jury instruction on punitive damages will satisfy due process. For example, the *only* information provided by the Arkansas "model" jury instruction given to the jury in *Robertson Oil Co.* v. *Phillips Petroleum Co.*, 979 F.2d, at 1306, is that punitive damages are imposed to punish and deter and that "[i]n arriving at the amount of punitive damages you may consider the financial condition" of the defendant. *See Arkansas Model Instruction* (AMI) 2217 (Civil 1989). The Eighth Circuit found this instruction "comparable" to the one upheld in *Haslip*, even though it

[17] *See, e.g., Price* v. *Highland Commercial Bank*, 932 F.2d 601, 605 (7th Cir. 1991) (interpreting *Haslip* as "upholding the constitutionality of punitive damages except in limited circumstances inapplicable here"); *Latham Seed Co.* v. *Nickerson American Plant Breeders, Inc.*, 978 F.2d 1493, 1501 (8th Cir. 1992) (conceding that Indiana, Ohio, Michigan, and Iowa have "less stringent procedures for reviewing punitive damage awards" than Alabama, but finding that appellant "err[ed] in construing the Alabama process approved in *Haslip* as setting a minimum standard for acceptable due process in the awarding of punitive damages").

[18] A chart listing post-*Haslip* federal court and state appellate court decisions and judgments of which *amici* are aware that uphold punitive damage awards is included as App. B, *infra*. Although this chart does not include unreported post-*Haslip* state trial court judgments entered on punitive damage verdicts, there are numerous such decisions, and some of the most egregious are discussed herein.

lacked a crucial limiting element contained in the *Haslip* instruction—the admonition to consider " 'the character and degree of the wrong' "—and included a highly prejudicial and inflammatory direction to punish the defendant based on its wealth that was excluded from the *Haslip* instruction. *See* 111 S. Ct., at 1044.

The Fifth Circuit recently upheld as constitutional a terse instruction that only told the jury that "[p]unitive damages are designed to punish the offender and serve as an example to others. Whether or not to award such damages, and the amount thereof, are matters confided to you for decision." *Brown* v. *Petrolite Corp.*, 965 F.2d 38, 50 (5th Cir. 1992).

In *American Employers Insurance* v. *Southern Seeding Service*, 931 F.2d 1453, 1457-58 (11th Cir. 1991), the court validated an instruction informing the jury that the amount of an award was "left to your best judgment and good discretion. There are no rules of thumb under the law for me to give you except, of course, you consider what was done and the purpose of punitive damages."

State courts have taken a similarly detached approach. In *Texas Farmers Insurance Co.* v. *Soriano*, No. 04-90-00222-CV, 1992 WL 350627 (Tex. Ct. App. Nov. 30, 1992), jurors were given the definition of gross negligence and then told that exemplary damages meant "an amount that you may, in your discretion, award as an example to others and as a penalty or by way of punishment." 1992 WL 350627, at *17. The court in *K-Mart Corp.* v. *Pearson on Behalf of Ramos*, 818 S.W.2d 410 (Tex. Ct. App. 1991), gave the same definition and then added, "You may consider K-Mart's net worth in determining what amount, if any, would constitute a penalty to K-Mart." *Id.*, at 874. And in *Wolf* v. *Goodyear Tire & Rubber Co.*, 808 S.W.2d 868 (Mo. App. 1991), the jury's only instruction on how to determine the size of the punitive damage award was that it " 'may award [plaintiff] an additional amount as punitive damages in such sum as you believe will serve to punish defendant Goodyear and to deter defendant Goodyear and others from like conduct.' " *Id.*, at 874.

Moreover, the courts have paid little heed to *Haslip*'s pointed emphasis on the fact that the Alabama system precluded jury consideration of the defendant's wealth.[19] Some courts, including the court below here, have even gone so far as to permit punishments to be calculated based on the jury's consideration of wealth of the defendant's *parent* corporation. *See, e.g., TXO*, 419 S.E.2d, at 890; *Continental Trend Resources, Inc.* v. *OXY USA, Inc.*, No. CIV-90-1006-A, slip op. at 33-34 (W.D. Okl. Oct. 20, 1992) *appeal docketed*, No. 92-6350 (10th Cir. Oct. 23, 1992) (upholding $30,000,000 punitive damage verdict based on the financial status of the defendant's "giant" parent corporation and its "grandparent corporation," which "is reputed to be one of the Top Ten oil companies in the nation"). Others have affirmed punishments where the jury was instructed to consider the defendant's wealth but no wealth evidence was introduced at all, leaving the jury only to speculate. *See, e.g., Latham Seed Co.*, 978 F.2d, at 1500 (upholding $10,000,000 award). And the courts continue to allow "expert" testimony regarding the wealth of the defendant, *see, e.g., Robertson Oil Co.* v. *Phillips Petroleum Co.*, 930 F.2d 1342, 1346 (8th Cir. 1991); *TXO*, 419 S.E.2d, at 890, which only serves to drive home to the jury that it is being invited to inflict a punishment against a deep pocket.

Perhaps the most vivid example of the failure of the courts to give content to the general guidance provided by *Haslip*, and of the severe consequences of limitless jury discretion, is *ContiCommodity Services, Inc.* v. *Prescott, Ball & Turben*, H-91-81 (S.D. Tex. Apr. 21, 1992), *appeal docketed*, No. 92-2617 (5th Cir. July 31, 1992). In that securities fraud case, the district court upheld the jury's verdict of $3,375,000 in compensatory damages and *$134,000,000* in punitive damages. Post-trial interviews with

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[19] *See Haslip*, 111 S. Ct., at 1044-45 (observing that "[a]ny evidence of Pacific Mutual's wealth was excluded from trial in accord with Alabama law," that the "fact finder must be guided by more than the defendant's net worth," and that "Alabama plaintiffs do not enjoy a windfall because they have the good fortune to have a defendant with a deep pocket").

the jurors revealed the absolute arbitrariness of the method used to arrive at this astounding punishment. First,

> each member independently came up with an amount that he or she felt would 'serve as punishment and as an example for the good of the public,' as the judge's instructions had put it. The sums, which ranged from hundreds of thousands of dollars to nearly a billion, were then averaged together.

Walker, *How They Arrived at $134 Million*, The American Lawyer, May 1992, at 98. When the averaging method "failed to yield a number the jurors felt they could endorse," they "started over again," adding $24,000,000 in "estimated" attorney's and accountant's fees to a $56,000,000 figure that had been "mentioned at trial" as indirect losses incurred by the plaintiff. Still "uncertain whether the resulting figure would be enough of a punishment," the jurors "doubled the award, and then, at the urging of two jurors who were small businessmen, reduced the figure to $134 million." *Id.* This extraordinary "process," "took no more than a morning," *id.*, and the district court denied the defendant's post-trial motions seeking to set the award aside.

2. Post-Verdict Review

The courts have generally ignored *Haslip*'s mandate for detailed and objective judicial scrutiny of punitive damage awards.

In *MGW, Inc.* v. *Fredricks Development Corp.*, 5 Cal. App. 4th 92, 102-03, 6 Cal. Rptr. 2d 888, *review granted*, 832 P.2d 898 (Cal. 1992), for example, the California Court of Appeal held that trial court review of punitive damage verdicts could be omitted altogether. Moreover, some trial courts that have purported to "review" punishments have not even bothered to cite *Haslip* or engage in any detailed analysis. *E.g., Capstick* v. *Allstate Ins. Co.*, No. CIV-90-284-S (E.D. Okl. Mar. 26, 1991), *amended* (E.D. Okl. June 11, 1991), *appeal docketed*, No. 91-7088 (10th Cir. June 28, 1991). And it took the trial court in *Sprague* v. *Philadelphia Newspapers, Inc.*, No. 3644 (Philadelphia Court of Common Pleas Sept. 8, 1992) (order denying post-trial motions), only a single sentence to deny the defendant publisher's request for a remittitur of $31,500,000 punitive damage award for libel.

Appellate courts also have failed satisfactorily to implement *Haslip*'s requirements regarding post-verdict review. For example, in *Hospital Authority of Gwinnett County* v. *Jones*, 261 Ga. 613, 409 S.E.2d 501 (1991), *cert. denied*, 112 S. Ct. 1175 (1992), the Georgia Supreme Court declined to disturb a punitive damage award even though it acknowledged "that the Alabama post-trial review by both the trial and appellate court [as approved by *Haslip*] is more structured" than is the reviewing process in Georgia. 409 S.E.2d, at 503. The court even questioned the wisdom of some of the Alabama guidelines for post-verdict review that were approved by this Court in *Haslip*, *see id.* ("Of what benefit, then, is scrutiny of those elements by the reviewing courts?"), and concluded that "[p]unitive damages do not survive court scrutiny because they can be accurately measured and adjusted by court imposed guidelines," *id.*, but rather simply because they are "[c]lothed in common-law history and tradition," *id.*, at 504.

In *Robertson*, the Eighth Circuit held that the Arkansas standard, which permits reversal of punitive damage awards only if "the amount shocks the conscience of the court or demonstrates that jurors were motivated by passion or prejudice," comports with the *Haslip* requirements for judicial review. 979 F.2d, at 1303. Similarly, in *MGW, Inc.*, the court determined that the California standards for reviewing punitive damage awards complied with *Haslip*, even though in California "a punitive damages award will be set aside only when it is so grossly disproportionate as to raise a presumption that it is the result of passion or prejudice." 5 Cal. App. 4th, at 103 (internal quotation marks omitted).[20]

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[20] A state intermediate appellate court that applies the *Haslip* re-

Even those courts that have remitted punitive damage awards have done so generally with little regard to the *Haslip* post-verdict review requirements. For example, in *Mason* v. *Texaco, Inc.*, 948 F.2d 1546 (10th Cir. 1991), *cert. denied*, 112 S. Ct. 1941 (1992), the Tenth Circuit reduced a punitive damage award from $25,000,000 to $12,500,000, finding simply that this award was "so excessive as to shock our judicial conscience," *id.*, at 1561, but not discussing any of the factors considered in arriving at this decision or explaining how the $12,500,000 remitted award was less shocking or more justifiable than the jury's original verdict.

In fact, because there are no standards for deciding the appropriate punishment, the remittitur process can be utterly irrational and very often amounts to nothing more than picking numbers out of thin air. *See, e.g., State Farm Mut. Auto Ins. Co.* v. *Zubiate*, 808 S.W.2d 590, 605 (Tex. Ct. App. 1991) ("Is the evidence factually sufficient to support the trial court's judgment upholding the jury award of $15 million in punitive damages against Appellant? Our answer is no, but why? *Because it just is.*") (emphasis in original); *Hilgedick* v. *Koehring Fin. Corp.*, 5 Cal. App. 4th 1118, 1122-23, 8 Cal. Rptr. 2d 76 (1992) (trial court reduced initial jury's $730,000 punitive damage award to $0 and ordered retrial; second jury imposed $11,000,000 punishment; second trial court remitted award to $8,000,000; and court of appeal further remitted award to $1,800,000); *Las Palmas Assocs.* v. *Las Palmas Center Assocs.*, 235 Cal. App. 3d 1220, 1255-56, 1 Cal. Rptr. 2d 301 (1991) (reducing $10,000,000 punitive verdict to

quirements may even run the risk of reversal by the state supreme court. For example, in *Hanson* v. *American National Bank & Trust Co.*, No. 91-SC-377-OG, 1992 WL 373057 (Ky. Dec. 17, 1992), the Kentucky Supreme Court reversed the Court of Appeals, which had ordered remittitur or a new trial in the alternative. According to the Kentucky Supreme Court, the intermediate court had overstepped its bounds, substituting its "opinion in the place of the jury's," 1992 WL 373057, at *8.

$2,000,000 because "any amount higher than $2,000,000 would certainly be the result of passion or prejudice").

Courts engage in a post-verdict review process bearing little resemblance to the process approved by this Court in *Haslip*. Awards are affirmed based upon the trial judge's highly subjective notions of what constitutes a good domestic, and sometimes even foreign, policy. For example, one trial court in a tortious interference action arising from a domestic commercial contract dispute recently affirmed an award on the grounds that, *inter alia*, "[the defendant's] conduct incrementally damages the United States in its present struggle to remain a global economic power." *Continental Trend Resources, Inc.*, No. CIV-90-1006-A, slip op. at 26; *cf. Union Mortgage Co.* v. *Barlow*, 595 So. 2d 1335 (Ala.) (affirming $6,001,000 punitive damage award against nationalized Finnish banking corporation), *cert. denied*, 113 S. Ct. 301 (1992).

In the case at bar, the West Virginia Supreme Court found that the *Haslip* requirements for objective post-verdict review—as well as West Virginia's own recently articulated procedure based on *Haslip*—could be jettisoned in favor of an utterly subjective construct for reviewing punitive damage awards based upon whether the case involves "(1) really stupid defendants; (2) really mean defendants; . . . [or] (3) really stupid defendants who could have caused a great deal of harm by their actions but who actually caused minimal harm." *TXO*, 419 S.E.2d, at 887-88. The court proposed this bizarre test, which it acknowledged to be "difficult" to apply, *see id.*, at 888 n.11, in order to differentiate between cases whose ratio of punitive to compensatory damages it sought to limit to "*roughly* five to one," and those cases whose ratio it considered to be essentially limitless—up to and even greater than 500 to one. *Id.*, at 889 (emphasis in original). As the concurrence observed, however, such a "ridiculous categorization" can offer "no practical guidance to attorneys or judges in analyzing punitive damages cases," *id.*, at 896 (McHugh, C.J. and Miller, J., concurring), and makes a mockery of the judicial process.

3. Proportionality

In *Haslip*, the Court articulated the constitutional principle that punitive damages must bear some rational relationship to the egregiousness of the defendant's conduct and the compensatory damage award. *See, e.g.*, 111 S. Ct., at 1045 (noting that Alabama's procedural safeguards adequately ensured "that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages").[21]

Since *Haslip*, however, courts have paid virtually no attention to the proportionality concerns expressed by this Court. For example, a federal district court in a bench trial inflicted a $1,000,000 punitive damage award based on $2 in nominal damages, for a ratio of 500,000 to one, without even discussing *Haslip* or articulating *any* justification for the size of the punishment. *Snead*, No. A-90-CA-38, slip op. at 17.

In *Jennings* v. *Jensen*, 407 S.E.2d 264 (N.C. App. 1991), the court affirmed a punitive damage award of $300,000 while simultaneously vacating the $200,000 compensatory award on which it was based, thus making the ratio actually infinite.[22] The *Jennings* majority ignored *Haslip* even as the dissent quoted the opinion. *Id.*, at 269 (Greene, J., dissenting) (quoting *Haslip*, 111 S. Ct., at 1045).

Similarly, in *Peoples Bank & Trust Co.* v. *Globe International Publishing Co.*, 978 F.2d 1065 (8th Cir. 1992), the Eighth Circuit found that a $50,000 compensatory damage award in a false light/invasion of privacy case against a publishing company was the product of a jury

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[21] *See also id.*, at 1046 (noting that punitive award, which was "more than 4 times the amount of compensatory damages," was a "wide" disparity and "indeed, may be close to the line .... of constitutional impropriety").

[22] Until recently, wrongful death cases in Alabama also awarded no actual damages, thus making their "ratios" infinite. *See, e.g., Atkins* v. *Lee*, 603 So. 2d 937 (Ala. 1992); *Yamaha Motor Co.* v. *Thornton*, 579 So. 2d 619 (Ala. 1991).

inflamed by passion and prejudice, was "shockingly inflated" and remanded for a "substantial remittitur." *Id.*, at 1071. But the court inexplicably allowed an $850,000 punitive damage award to stand untethered to any compensatory award, even though it recognized that "punitive damages should bear a reasonable relationship to the harm that has occurred." *Id.*

Many courts, while citing *Haslip*, have nonetheless awarded punitive damages vastly in excess of the actual injury inflicted. In at least twelve cases, courts that have purported to follow *Haslip* have nonetheless awarded punitive damages at least 100 times the amount of actual damages awarded.[23] Six of those cases involved ratios of 499:1 or wider. And the Alabama Supreme Court alone has used the license given to it in *Haslip* to affirm awards where the ratio was at least 100:1 on no less than *six* occasions since *Haslip*.

Some courts, despite *Haslip*, continue to assert that there need not be *any* kind of proportionality between the actual damages and the punitive damages awarded. In upholding a $30,000,000 punitive damage award that is 111 times the compensatory award, the court in *Continental Trend Resources, Inc.* stated that " 'Oklahoma does not require the amount of punitive damages to be in a particular ratio to the amount of actual damages.' " Slip op.

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[23] *Principal Fin. Group* v. *Thomas*, 585 So. 2d 816 (Ala.) (750:1), *cert. denied*, 112 S. Ct. 649 (1991); *Capstick*, No. CIV-90-284-5 (E.D. Okl. Mar. 26, 1991) (666:1); *TXO*, 419 S.E.2d 870 (526:1); *Standard Plan, Inc.* v. *Tucker*, 582 So. 2d 1024 (Ala. 1991) (500:1); *Eichenseer*, 934 F.2d 1377 (500:1); *Southern Life & Health Ins. Co.* v. *Turner*, 586 So. 2d 854 (Ala. 1991) (499:1); *Smith* v. *States General Life Ins. Co.*, 592 So. 2d 1021 (Ala. 1992) (416.67:1); *Hospital Auth. of Gwinnett County*, 409 S.E.2d 501 (260:1); *Viking Ins. Co. of Wisconsin* v. *Jester*, 836 S.W.2d 371 (Ark. 1992) (250:1); *Continental Trend Resources, Inc.*, No. Civ. 90-1006-A (W.D. Okl. Oct. 20, 1992) (111.5:1); *Intercontinental Life Ins. Co.* v. *Lindblom*, 598 So. 2d 886 (Ala.) (100:1), *cert. denied*, 113 S. Ct. 200 (1992); *General Motors Corp.* v. *Johnston*, 592 So. 2d 1054 (Ala. 1992) (100:1).

at 41 (quoting *Buzzard* v. *Farmers Ins. Co.*, 824 P.2d 1105, 1115 (Okl. 1991)).[24]

Even more disturbing are the cases remanded for reconsideration by this Court with explicit directions to reevaluate the punitive damage awards in light of *Haslip*. On remand in *Hospital Authority of Gwinnett County* v. *Jones*, the Georgia Supreme Court upheld a 260:1 ratio. The court stated that "[w]hile the Supreme Court in *Haslip* analyzed the punitive damages award by comparing it to the actual award, nothing in the opinion mandates such a comparison. . . . While comparison to the actual damages may be appropriate in one case, it may not in another." 409 S.E.2d, at 503.

In *Southern Life and Health Insurance Co.* v. *Turner*, the Alabama Supreme Court upheld a 499:1 ratio on remand, asserting that it could find "no compelling reason to set an arbitrary mathematical relationship between compensatory and punitive damages. Imposing such a relationship would inevitably result in injustice, and we decline to impose it." 586 So. 2d, at 858. And in *Eichenseer* v. *Reserve Life Insurance Co.*, the Fifth Circuit, on remand, purported to apply *Haslip*'s precepts but then reaffirmed a 500:1 ratio, concluding that "[p]erhaps in some cases—even in many cases—an award of punitive damages that is five hundred times the amount of the compensatory

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[24] *See also Jordan* v. *Clayton Brokerage Co. of St. Louis, Inc.*, 975 F.2d 539 (8th Cir. 1992) ("punitive damages . . . need not bear any relation to the actual damages allowed."), *petition for cert. filed* (U.S. Dec. 17, 1992) (No. 92-1054); *Robertson*, 979 F.2d, at 1310 ("the loss to Robertson Oil reflected in the compensatory damages interrogatory has no bearing on the punitive damages award"); *Burke* v. *Deere & Co.*, 780 F. Supp. 1225, 1237 (S.D. Iowa 1991) ("There is no set mathematical ratio between actual and exemplary damages."); *Ebeling & Reuss, Ltd.* v. *Swarovski Int'l Trading Corp., A.G.*, No. Civ. A. 88-4878, 1992 WL 211554, at *18 (E.D. Pa. Aug. 24, 1992) ("Pennsylvania law makes clear that punitive damages awards do not have to be related to the compensatory damages suffered."); *General Motors Corp.*, 592 So. 2d, at 1063 ("punitive damages need bear no relationship to actual damages").

damages will violate due process. This is not such a case." 934 F.2d, at 1384.

CONCLUSION

Haslip should have made clear that punishments imposed by courts for public wrongs and paid to private litigants must be rigorously controlled under the Due Process Clause. However, as demonstrated by the "really mean/really stupid" test adopted by the court below and the multitude of other cases upholding "millions of dollars of liability" in a similarly "hodge-podge fashion," *Haslip*, 111 S. Ct., at 1053 (Scalia, J., concurring in the judgment), the message of *Haslip* is being misunderstood, ignored or flouted. The Court should leave no doubt in this case that the Constitution will not tolerate such arbitrary and severe punishments.

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APPENDIX

APPENDIX A

At the time of ratification of the Fourteenth Amendment, most States had enacted comprehensive codifications describing the conduct which could be subjected to punishment and the maximum punishment that could be administered. *See* Ark. Stat. ch. 42 (1874) (general codification of crimes); *see id.* §§ 1357, 1364, 1381, 1386, 1388 (imposing maximum fines for a variety of offenses); *see* Cal. Stat. ch. 99 (1850) (general codification of crimes); *see id.* ch. 99 §§ 61, 63, 69, 86, 87; *see* Conn. Gen. Stat. tit. 12 (1866) (general codification of crimes); *see id.* §§ 90-92, 160-166, 180-181 (imposing maximum fines for a variety of offenses); *see* Del. Rev. Stat. chs. 126-133 (1852) (general codification of crimes); *see id.* ch. 128, §§ 3-6, 8-19, ch. 129, §§ 1-5 ch. 130, §§ 1-5, (imposing maximum fines for a variety of offenses); *see* Fla. Stat. chs. 42-56 (1872) (general codification of crimes); *see id.*, ch. 44 §§ 5, 9, 17, 18, 49, ch. 45 § 6, 8, 9; *see* Ga. Code §§ 4286-4336 (1861) (general codification of crimes); *see id.* §§ 4332, 4468, 4470, 4480, 4482 (imposing maximum fines for a variety of offenses); *see* Digest of the Crim. Laws of Ill. (1868) (general codification of crimes); *see id.* division 7 §§ 86, 91, 95, 100, division 8 § 199; *see* Ind. Stat. chs. 6-7 (1862) (general codification of crimes); *see id.* ch. 6 §§ 36, 37, 39, 43, 46; *see* Iowa Code tit. 24 (1873) (general codification of crimes); *see id.* ch. 3 §§ 3885-3886, 3889-3890, 3898 (imposing maximum fines for a variety of offenses); *see* Kan. Gen. Stat. ch. 31 (1876) (general codification of crimes); *see id.* ch. 31 §§ 80, 109, 113, 146 (imposing maximum fines for a variety of offenses); *see* Ky. Rev. Stat. Ann. ch. 28, arts. 1-26 (1867) (punishing full range of offenses, including offenses against the person, forgery, larceny, embezzlement, and trespass); *see id.* ch. 28, art. 14 § 6, art. 15 §§ 4, 7, art. 16 §§ 2, 5, art. 17 §§ 1-2, 6-8, 10, 12-20, 22-25, art. 18 §§ 4-5, art. 19 §§ 1-3, art. 20 § 2, art. 21 § § 1-5, art. 22 § 3, art. 23 § § 1-3; art. 24 §§ 2, 5, art. 25 §§ 2-5, 7-10 (imposing maximum fines for a variety of offenses); *see*

La. Rev. Stat. §§ 784-975 (1870) (general codification of crimes); *see id.* §§ 811, 815-819, 821-822, 824-826 (imposing maximum fines for a variety of offenses); *see* Me. Rev. Stat. chs. 117-139 (1871) (general codification of crimes); *see id.* ch. 120§§ 1-4, 6, 8, ch. 121 §§ 3, 6 (imposing maximum fines for a variety of offenses); *see* Md. Code art. 30 (1860) (general codification of crimes); *see id.* art. 30 §§ 19-20, 34, 38; *see* Mass. Gen. Stat. chs. 161-164 (1860) (general codification of crimes); *see id.* ch. 161 §§ 43, 44, 46, 48, 54-56, 91 (imposing maximum fines for a variety of offenses); *see* Minn. Stat. ch. 54 (1873) (general codification of crimes); *see id.* tit. 4 §§ 82, 84, 87, 96-97, 102-103, 105 (imposing maximum fines for a variety of offenses); *see* Miss. Rev. Code ch. 58 (1871) (general codification of crimes); *see id.* §§ 2547, 2569, 2597, 2653, 2656-2657 (imposing maximum fines for a variety of offenses); *see* Mo. Stat. ch. 42 (1870) (general codification of crimes); *see id.* art. 3 §§ 27, 31, 59, 65-66, 68-69 (imposing maximum fines for a variety of offenses); *see* Nev. Laws ch. 54 (1873) (general codification of crimes); *see id.* §§ 2368-2369, 2379, 2386-2387 (imposing maximum fines for a variety of offenses); *see* N.H. Gen. Laws chs. 269-284 (1878) (general codification of crimes); *see id.* ch. 275 §§ 1-4, 7, 8, 10, 11 (imposing maximum fines for a variety of offenses); *see* N.Y. Stat., ch. 1, tits. 1-7 (1869) (general codification of crimes); *see id.* ch. 1, tit. 3 §§ 69, 71, ch. 1, tit. 4 §§ 9-13 (imposing maximum fines for a variety of offenses); *see* N.C. Rev. Code. ch. 34 (1855) (general codification of crimes); *see id.* ch. 34 §§ 49, 65, 68-70, 83-88, 91-92 (imposing maximum fines for a variety of offenses); *see* Ohio Crim. Code (1878) (general codification of crimes); *see id.* ch. 3 §§ 6-7, 16, 20, 22 (imposing maximum fines for a variety of offenses); *see* Or. Stat. chs. 3-12 (1855) (general codification of crimes); *see id.* ch. 4 §§ 12-13, 16-17, 31-32, 34-40 (imposing maximum fines for a variety of offenses); *see* Pa. Rev. Penal Code (1860) (general codification of crimes); *see id.* §§ 100-106, 111-112, 119-121, 125-

130, 134, 155-162, 164-165 (imposing maximum fines for a variety of offenses); *see* R.I. Stat. tit. 30 (1857) (general codification of crimes); *see id.* tit. 30, ch. 214 §§ 10, 14, 16-20, 22, 24-28 (imposing maximum fines for a variety of offenses); *see* S.C. Rev. Stat. tit. 2 (1894) (general codification of crimes); *see id.* § § 276-282, 288-295 (imposing maximum fines for a variety of offenses); *see* Tex. Laws arts. 355-572 (1850) (general codification of crimes); *see id.* arts. 380-382, 386, 389, 391, 393 (imposing maximum fines for a variety of offenses); *see* Vt. Stat. tit. 38 (1851) (general codification of crimes); *see id.* ch. 104 §§ 2-10, 15, 19-22, 26-28 (imposing maximum fines for a variety of offenses); *see* Va. Code tit. 54 (1860) (general codification of crimes); *see id.* ch. 192 §§ 18, 24, 27, 30, 32; *see* W.Va. Code chs. 143-152 (1870) (general codification of crimes); *see id.* ch. 144 §§ 9-11, ch. 145 §§ 5-8, 23 (imposing maximum fines for a variety of offenses); *see* Wis. Stat. tit. 27 (1871) (general codification of crimes); *see id.* ch. 164 §§ 23, 29, 31-32, 38, 42, 45, ch. 165 §§ 16-18, 23 (imposing maximum fines for a variety of offenses).

APPENDIX B

POST-*HASLIP* DECISIONS UPHOLDING PUNITIVE DAMAGE AWARDS

I. Federal Courts of Appeals Decisions	Nature of Conduct:	Amount of Actual Damages Upheld by Court:	Amount of Punitive Damages Upheld by Court:
Keenan v. City of Philadelphia, 1992 WL 370033 (3d Cir. Dec. 17, 1992)	Gender Discrimination	$ 640,000	$ 666,666.65
Estes v. Time Ins. Co., 1992 WL 353272 (8th Cir. Nov. 3, 1992)	Tortious Interference	$ 300,000	$ 1,700,000
Robertson Oil Co. v. Phillips Petroleum Co., 979 F.2d 1301 (8th Cir. 1992)	Tortious Interference & Fraud	$ 750,000	$ 8,000,000
Wackenhut Applied Technologies Ctr., Inc. v. Sygenetron Protection Systems, Inc., 979 F.2d 980 (4th Cir. 1992)	Tortious Interference	$ 100,000	$ 350,000
Latham Seed Co. v. Nickerson American Plan Breeders, Inc., 978 F.2d 1493 (8th Cir. 1992)	Fraud	$ 1,100,000	$ 10,000,000
Peoples Bank & Trust Co. v. Globe Int'l Publishing, Inc., 978 F.2d 1065 (8th Cir. 1992)	False Light/Invasion of Privacy	Remanded for "Substantial Remittitur" of $650,000	$ 850,000

Jordan v. Clayton Brokerage Co., 975 F.2d 539 (8th Cir.), *petition for cert. filed*, (U.S. Dec. 17, 1992) (No. 92-1054)	Commodities Fraud	$ 7,923	$ 400,000
Morgan v. Woessner, 975 F.2d 629 (9th Cir. 1992)	False Imprisonment, Battery & Infliction of Emotional Distress	$ 90,000	$ 100,000
Broadcor Capital Corp. v. Summa Medical Corp., 972 F.2d 1183 (10th Cir. 1992)	Refusal to Register & Transfer Stock Certificates	$ 1,600,000	$ 400,000
Waits v. Frito-Lay, Inc., 1992 WL 183781 (9th Cir.), *cert. denied*, (Jan. 19, 1993) (No. 92-863)	Tort of Voice Misappropriation	$ 375,000	$ 2,000,000
Brown v. Petrolite Corp., 965 F.2d 38 (5th Cir. 1992)	Business Defamation	$ 60,000	$ 700,000
Stephens, Inc. v. Gelderman, Inc., 962 F.2d 808 (8th Cir. 1992)	Securities Fraud	$ 1,381,000	$ 1,000,000
Mason v. Texaco, Inc., 948 F.2d 1546 (10th Cir. 1991), *cert. denied*, 112 S. Ct. 1941 (1992)	Products Liability	$ 9,000,000	$ 12,500,000
Glasscock v. Armstrong Cork Co., 946 F.2d 1085 (5th Cir.), *reh'g denied*, 951 F.2d 347 (5th Cir. 1991), *cert. denied sub nom.* 112 S. Ct. 1778 (1992)	Products Liability	$ 2,590,000	$ 6,100,000

Owens v. International Business & Mercantile Reassurance Co., 940 F.2d 1538 (10th Cir. 1991)	Bad Faith Denial of Claim	$ 1,232,180	$ 2,000,000
Braswell v. Conagra, Inc., 936 F.2d 1169 (11th Cir. 1991)	Fraud & Breach of Contract	$ 4,550,000	$ 9,100,000
Eichenseer v. Reserve Life Ins. Co., 934 F.2d 1377 (5th Cir. 1991)	Bad Faith Denial of Claim	$ 1,000	$ 500,000
Guill v. Academy Life Ins. Co., 935 F.2d 1286 (4th Cir.), *cert. denied*, 112 S. Ct. 418 (1991)	Commission Conversion	$ 76,839	$ 500,000
	Federal Appellate Total		$ 56,866,666.65

I. Federal District Court Decisions	**Nature of Conduct:**	**Amount of Actual Damages Upheld by Court:**	**Amount of Punitive Damages Upheld by Court:**
Continental Trend Resources, Inc. v. OXY USA, Inc., No. Civ. 90-1006-A (W.D. Okl. Oct. 20, 1992), *appeal docketed*, No. 92-6350 (10th Cir. Oct. 23, 1990)	Tortious Interference	$ 269,000	$30,000,000
Ebeling & Reuss, Ltd. v. Swarovski Int'l Trading Corp., 1992 WL 211554 (E.D. Pa. Aug. 24, 1992), *appeal docketed*, No. 92-6350 (10th Ciir. Oct. 23, 1992)	Fraud, Tortious Interference & Trademark Infringement	$ 25,850,000	$ 16,500,000
Weathers v. American Family Mutual Ins. Co., 793 F. Supp. 1002 (D. Kan. 1992)	Outrage, Malicious Prosecution & Breach of Contract	$ 4,800,000	$ 2,600,000
Laughinghouse v. Risser, 786 F. Supp. 920 (D. Kan. 1992)	Outrage	$ 100,000	$ 600,000
Snead v. Redland Aggregates Ltd., No. A-90-CA-38 (W.D. Tex. May 27, 1992)	Trade Libel	$ 2	$ 1,000,000
Burke v. John Deere & Co., 780 F. Supp. 1225 (S.D. Iowa 1991)	Products Liability	$ 390,000	$ 28,000,000
Capstick v. Allstate Ins. Co., No. Civ.-90-284-5 (E.D. Okl. March 26, 1991), *amended* (E.D. Okl. June 11, 1991), *appeal docketed*, No. 91-7088 (10th Cir. June 28, 1991)	Bad Faith Denial of Claim	$ 3,000	$ 2,000,000

Ross v. Jackie Fine Arts, Inc., 1991 WL 213815 (D. S.C. 1991)	Fraud & Misrepresentation	$ 881,359	$ 13,875,000
ContiCommodity Services, Inc. v. Prescott, Ball & Turben, Civil Action No. H-91-81 (S.D. Tex. Apr. 20), *appeal docketed*, No. 92-2617 (5th Cir. July 31, 1992)	Securities Fraud	$ 3,375,000	$134,000,000
Defenders Indus., Inc. v. Northwestern Mutual Life Ins. Co., No. CIV. A. 3:88-3231-17, 1992 WL 364904 (D.S.C. Apr. 29, 1992)	Insurance Fraud	$ 106,513.74	$ 5,000,000
	Federal District Court Total		$233,575,000

III. State Appellate Decisions	**Nature of Conduct:**	**Amount of Actual Damages Upheld by Court:**	**Amount of Punitive Damages Upheld by Court:**
Texas Farmers Ins. Co. v. Soriano, 1992 WL 350627 (Tex. Ct. App. Nov. 30, 1992)	Bad Faith Denial of Claim	$ 520,577	$ 1,000,000
Browning-Ferris Indus. Inc. v. Lieck, 1992 WL 336113 (Tex. Ct. App. Nov. 19, 1992)	Malicious Prosecution	$ 1,750,000	$ 1,500,000
Mistich v. Pipelines Inc., 1992 WL 332598 (La. App. Nov. 17, 1992)	Personal Injury	$ 3,100,000	$ 4,000,000
Maintenance Equipment Company, Inc. v. Godley Builders, 420 S.E.2d 199 (N.C. App. 1992)	Malicious Trespass	$ 4,550	$ 175,000
Aero Garage Corp. v. Hirschfeld, 586 N.Y.S.2d 611 (N.Y. App. Div. 1992)	Malicious Breach of Lease	$ 74,000	$ 150,000
Prudential Ins. Co. of America v. Jefferson Associates, Ltd., 839 S.W.2d 866 (Tex. Ct. App. 1992)	Fraudulent Concealment & Misrepresentation	$ 6,000,000	$ 14,300,000

Atkins v. Lee, 603 So. 2d 937 (Ala. 1992)	Wrongful Death	None	$ 6,875,000
Viking Insurance Co. of Wisconsin v. Jester, 836 S.W.2d 371 (Ark. 1992)	Bad Faith Denial of Claim	$ 1,000	$ 250,000
Davis v. Celotex Corp., 420 S.E.2d 557 (W.Va. 1992)	Wrongful Death	$ 66,000	$ 40,000
TXO Production Corp. v. Alliance Resources Group, 419 S.E.2d 870 (W.Va. 1992), *cert. granted*, 113 S. Ct. 594 (1992)	Slander of Title	$ 19,000	$ 10,000,000
Market Tavern, Inc. v. Bowen, 610 A.2d 295 (Md. App.), *cert. denied*, 614 A.2d 84 (Md. 1992)	Battery, Pain & Suffering	$ 150,000	$ 150,000
Intercontinental Life Insurance Co. v. Lindblom, 598 So. 2d 886 (Ala.), *cert. denied*, 113 S. Ct. 1200 (1992)	Fraud & Bad Faith Denial of Claim	$ 10,000	$ 1,000,000
Hilgedick v. Koehring Finance Corp., 5 Cal. App. 4th 1118, 8 Cal. Rptr. 2d 76 (1992)	Tortious Interference & Bad Faith	$ 730,482	$ 1,800,000
Eagle-Picher Industries, Inc. v. Balbos, 604 A.2d 445 (Md. 1992)	Wrongful Death	$ 1,800,000	$ 150,000
MGW, Inc. v. Fredricks Development Corp., 5 Cal. App. 4th 1992, 6 Cal. Rptr. 2d 888 *review granted*, 832 P.2d 898 (1992)	Tortious Interference & Conspiracy	$ 558,000	$ 2,000,000

Wollersheim v. Church of Scientology of California, 6 Cal. Rptr. 2d 532 (Cal. Ct. App. 1992)	Intentional Infliction of Emotional Injury	$ 500,000	$ 2,000,000
General Motors Corp. v. Johnston, 592 So. 2d 1054 (Ala. 1992)	Products Liability & Wrongful Death	$ 75,000	$ 7,500,000
Estate of Baxter v. Grange Mutual Casualty Co., 597 N.E.2d 1157 (Ohio App. 1992)	Bad Faith Denial of Claim	$ 114,525	$ 250,000
Pote v. Jarrell, 412 S.E.2d 770 (W. Va. 1991)	Malicious Prosecution & Abuse of Process	$ 12,000	$ 35,000
Buzzard v. Farmers Ins. Co., Inc., 824 P.2d 1105 (Okl. 1991)	Bad Faith Denial of Claim	$ 212,000	$ 400,000
General Motors Corp. v. Saenz, 829 S.W.2d 230 (Tex. Ct. App. 1991)	Products Liability	$ 4,784,447.06	$ 2,500,000
Valley Building & Supply, Inc. v. Lombus, 590 So. 2d 142 (Ala. 1991), *aff'd*, No. 89-1788, 1991 LEXIS 1169 (Ala. No. 22, 1991)	Wrongful Death	None	$ 600,000
Texas Employer's Insurance Association v. Puckett, 822 S.W.2d 133 (Tex. Ct. App. 1991)	Bad Faith Termination of Benefits & Mental Anguish	$ 150,000	$ 1,500,000
Associated Financial Services Co. of Alabama, Inc. v. Barbour, 592 So. 2d 191 (Ala. 1991)	Fraud	$ 15,000	$ 700,000

Las Palmas Associates v. Las Palmas Center Associates, 235 Cal. App. 3d 1220, 1 Cal. Rptr. 2d 301 (1991)	Fraud & Breach of Contract	$ 232,000	$ 2,000,000
Hospital Authority of Gwinnett County v. Jones, 409 S.E.2d 501 (Ga. 1991), *cert. denied*, 112 S. Ct. 1175 (1992)	Battery	$ 5,001	$ 1,300,000
G.N. Danavox, Inc. v. Starkey Laboratories, Inc., 476 N.W.2d 172 (Minn. App. 1991), *cert. denied*, 112 S. Ct. 2940 (1992)	Tortious Interference & Deceptive Trade Practices	$ 552,000	$ 1,500,000
Harrell v. Old American Insurance Co., 829 P.2d 75 (Okla. App. 1991)	Bad Faith Denial of Claim	$ 41,800	$ 250,000
Commonwealth Lloyd's Ins. Co. v. Thomas, 825 S.W.2d 135 (Tex. Ct. App. 1992)	Bad Faith Denial of Claim	$ 708,800	$ 2,000,000
United Farm Bureau Mut. Ins. Co. v. Ira, 577 N.E.2d 588 (Ind. App. 4 Dist. 1991)	Bad Faith Denial of Claim	$ 55,000	$ 108,000
Southern Life & Health Ins. Co. v. Turner, 586 So. 2d 854 (Ala. 1991)	Fraud	$ 1,000	$ 499,000
Principal Financial Group v. Thomas, 585 So. 2d 816 (Ala.), *cert. denied*, 112 S. Ct. 649 (1991)	Bad Faith Denial of Claim	$ 1,000	$ 750,000

Fraser v. Reynolds, 588 So. 2d 448 (Ala. 1991)	Fraudulent Inducement of Limited Partners to Invest in Real Estate Limited Partnership	$ 16,081	$ 375,000
Berg v. Transamerica Ins. Co., 163 Wis. 2d 1091, 474 N.W.2d 528 (table), *review denied*, 477 N.W.2d 286 (1991)	Negligent Representation & Contract Fraud	$ 363,000	$ 186,000
Granite Const. Co. v. Mendoza, 816 S.W.2d 756 (Tex. Ct. App. 1991)	Negligence in Worker's Compensation Death Claim	Unclear	$ 2,250,000
K-Mart Corporation v. Pearson Estate of Ramos, 818 S.W.2d 410 (Tex. Ct. App. 1991)	Personal Injury	$ 1,718,870	$ 2,200,000
Transportation Ins. Co. v. Moriel, 814 S.W.2d 144 (Tex. Ct. App. 1991)	Bad Faith Denial of Claim	$ 101,000	$ 1,000,000
Teitel v. First Los Angeles Bank, 231 Cal. App. 3d 1593, 282 Cal. Rptr. 916 (1991)	Wrongfully Dishonoring of Checks & Breach of Duty of Good Faith and Fair Dealing	$ 9,000	$ 500,000
Oberg v. Honda Motor Co., Ltd., 814 P.2d 517 (Or. App. 1991)	Product Liability	$ 735,512.31	$ 5,000,000
General Chemical Corp. v. De La Lastra, 815 S.W.2d 750 (Tex. Ct. App. 1991)	Product Liability & Wrongful Death	$ 6,502,500	$ 15,000,000
Bradley v. Hubbard Broadcasting, Inc., 471 N.W.2d 670 (Minn. App. 1991)	Defamation & Reprisal Discrimination	$ 58,000	$ 100,000

Ward v. Terminix Intern., Inc., 1991 WL 87336 (Tenn. App. 1991)	Gross Negligence in Spraying Insecticides	$ 1,200,000	$ 2,800,000
Yamaha Motor Co. v. Thornton, 579 So. 2d 619 (Ala. 1991)	Product Liability & Wrongful Death	None	$ 750,000
Fibreboard Corp. v. Pool, 813 S.W.2d 658 (Tex. Ct. App. 1991)	Product Liability & Wrongful Death	$ 5,000,000	$ 5,000,000
Republic Ins. Co. v. Hires, 810 P.2d 790 (Nev. 1991)	Bad Faith Denial of Claim	$ 410,000	$ 5,000,000
State Farm Mut. Auto. Ins. Co. v. Zubiate, 808 S.W.2d 590 (Tex. Ct. App. 1991)	Bad Faith Denial of Claim	$ 165,000	$ 660,000
Liberty Transport, Inc. v. Gorst Co., Inc., 229 Cal. App. 3d 417, 280 Cal. Rptr. 159 (1991)	Bad Faith Denial of Claim	$ 82,500	$ 400,000
Wolf v. Goodyear Tire & Rubber Co., 808 S.W.2d 868 (Mo. 1991)	Product Liability	$ 49,500	$ 250,000
Standard Plan, Inc. v. Tucker, 582 So. 2d 1024 (Ala. 1991)	Bad Faith Denial of Claim	$ 1,083.19	$ 500,000
Smith v. States General Life Ins. Co., 592 So. 2d 1021, (Ala. 1992)	Fraud in Medical Insurance Coverage	$ 600	$ 250,000
Union Mortgage Co. v. Barlow, 595 So. 2d 1335 (Ala.) *cert. denied*, 113 S. Ct. 301 (1992)	Fraud, Conspiracy & Breach of Contract	$ 150,000	$ 6,001,000

Hanson v. American National Bank & Trust Co., 1992 WL 373057 (Ky. Dec. 17, 1992)	Fraud & Misrepresentation	$ 1,065,000	$ 5,775,000
Smart v. Caterpillar, Inc., 170 Wis. 2d 732, 492 N.W.2d 190 (table) (1992)	Product Liability	$ 4,000,000	$ 7,500,000
		State Appellate Total	$128,779,000